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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,502	04/30/2001	David B. Colasurdo	RSW9-2001-0081-US1	2095
7590 Theodore Naccarella Synnestvedt & Lechner 2600 Aramark Tower 1101 Market Street Philadelphia, PA 19107-2950		02/21/2008	EXAMINER BLAIR, DOUGLAS B	
			ART UNIT 2142	PAPER NUMBER
			MAIL DATE 02/21/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

AK

<b>Office Action Summary</b>	<b>Application No.</b> 09/845,502	<b>Applicant(s)</b> COLASURDO ET AL.	
	<b>Examiner</b> DOUGLAS B. BLAIR	<b>Art Unit</b> 2142	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 16-29 is/are rejected.
- 7) ☒ Claim(s) 3-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
       a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

In view of the Appeal Brief filed on November 30, 2007, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing on the last page of this office action.

### ***Response to Arguments***

Applicant's specific arguments against the applied references with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection. However, the examiner points out that some of the applicant's arguments are not in line with the scope of the applicant's independent claims. For example, the applicant argues in the Appeal Brief the following:

As briefly discussed above, present invention maintains server affinity by grouping together client requests under a session identification code. These previous requests are linked to the servers that

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handled the requests by the session identification codes. When additional requests are received from previously served clients, the clients attach the session identification code from any previous requests. This enables the request to be quickly forwarded to a server that has previously handled this request. On[e] important aspect of the present invention is associating with a collection of requests sharing a session identification code a list of every server in the server group that has serviced a request in the collection. This is important as it provides a means for load balancing without losing session affinity. If the server that previously handled a client request is busy and cannot handle a new request from the same client, a server that has handled a similar request from the same group can handle the client's new request and affinity is maintained. This feature is not taught or reasonably suggested by the prior art of record and renders the present invention as non-obvious.

The independent claims do not however reflect the concept that the idea that a request can be sent to another server if the current server is too busy to process the request. Instead the independent claims merely state that a list of servers is created and a server is selected from the list. The independent claims have nothing to do with checking whether the previous server that serviced the request is busy and then going through the list to see if there is a match. Because of this omission a new grounds of rejection is set forth in the office action to specifically address the broad nature of the rejected claims.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The applicant's specification does not define the computer readable media claimed in claims 16-29.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 16-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 16-29 are directed towards a computer readable product embodied on computer readable media. Though the applicant's specification does not explicitly define the term "computer readable media", page 22, lines 3-5 of the applicant's specification indicate that the applicant's claimed invention may be embodied completely in software. Because the scope of claims 16-29 is directed towards software per se, they do not fit into any of the statutory categories of invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "the method of claim 16" in the preamble. There is insufficient antecedent basis for this limitation in the claim. Claim 16 is not directed towards a method.

Claim 18 features the same problem as claim 17.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 16, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent Number 7,197,547 to Miller et al.

As to claim 1, Miller teaches a method of maintaining session affinity in a server farm coupled to receive client requests (See Abstract, “...once an electronic commerce session has been initiated between the first server and the source device, the first server may handle all subsequent requests from the source device...”), said server farm comprising multiple server groups (col. 5, lines 33-45, each subordinate Farm Unit arbitrates a group), each server group comprising multiple clone servers (col. 5, line 35, the one or more respective host servers are the clones), said method comprising the steps of: (1) associating a collection of related client requests with a unique session identification code (col. 9, lines 4-8); (2) responsive to receipt of a client request, determining to which of said server groups said client request can be dispatched (col. 7, lines 48-52); (3) associating with said collection of requests sharing a session identification code a list of every server in said server farm that has serviced a request in said collection (col. 12, lines 30-55, though Server B is handling the current request during Server A's failure, Server B still knows to look in Server A's cache and therefore some form of list is in existence. These teachings meet the broad nature of the claim as there is nothing specifically claimed about the list.); (4) responsive to said receipt of a client request which comprises a session identification code, determining if said list associated with said received session identification code includes a server identification code that matches a server

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identification code of a server in said determined server group (**col. 13, lines 8-21, Server B is found for subsequent request packets. Embodiments where Server A does not fail would also satisfy this limitation**); and (5) if a match is detected, dispatching said client request to said matched server (**col. 13, lines 8-21, Server B receives the request**).

As to claim 2, Miller teaches the method of claim 1 wherein step (3) comprises, upon routing of a client request in a session to a server that has not previously serviced a client request in said session, adding a unique server identification code corresponding to said server to a list of server identification codes associated with said session, without deleting any other server identification codes in said list (**col. 13, lines 8-21, Both Servers A and B can be accessed once Server A recovers, therefore neither was deleted**).

As to claims 16-17, they correspond to a computer readable product embodied on a computer-readable media that implements the methods of claims 1-2. Therefore claims 16-17 are rejected for the same reasons as claims 1-2.

#### ***Allowable Subject Matter***

Claims 3-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 18-29 are allowable over the prior art of record but they are rejected as being non-statutory and unclear in the case of claim 18.

The following is a statement of reasons for the indication of allowable subject matter: Claim 3 stipulates that the unique server identification code is sent to the client machine that issued the request. Miller does not teach a method of sending the unique server identification

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code to the client nor does the prior art teach or make obvious this concept in the context of the applicant's claims 1 and 2, as required by claim 3. Claims 4-10 and 12-15 are objected to by virtue of their dependence on claim 3. Claim 11 features a limitation in which the list of server is searched in a temporal order from which the servers were added to the list of servers. Miller does not teach this concept nor does the prior art of record teach or make obvious this concept in the context of the applicant's claim 1. Claim 18 is directed towards the same subject matter as claim 3 and therefore is allowable with respect to the prior art for the same reasons as claim 3. Claims 19-29 are allowable over the prior art by virtue of their dependence on claim 18.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

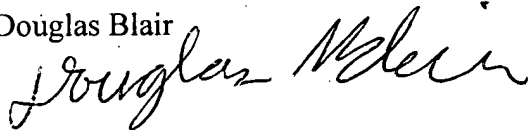
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Douglas Blair



ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER